

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Olga Bentin	Team: Squad #4	CCRB Case #: 201900151	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/02/2019 8:30 AM, Wednesday, 01/09/2019	Location of Incident: In Front § 87(2)(b) 114th Precinct stationhouse	Precinct: 114	18 Mo. SOL 7/2/2020	EO SOL 2/16/2021	
Date/Time CV Reported Sat, 01/05/2019 1:41 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 01/05/2019 1:41 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Michelle Wallace	6539	946383	114 DET
2. SGT Pearce Martinez	04799	955137	PSA 9
3. POF Melissa Buck	10036	960289	114 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Wanda Ferreira	19004	958587	PSA 9
2. POF Audeliz Beauchamp	01510	942984	PSA 9
3. POM Erik Cavanagh	20123	958386	PSA 9
4. POM Alexander Skaats	09989	961298	PSA 9
5. POF Victoria Garcia	07249	960579	PSA 9

Officer(s)	Allegation	Investigator Recommendation
A.SGT Pearce Martinez	Abuse: On January 2, 2019, in front of § 87(2)(b) in Queens, Sergeant Pearce Martinez threatened to arrest § 87(2)(b)	
B.POF Melissa Buck	Abuse: On January 2, 2019, at the 114th Precinct stationhouse, Police Officer Melissa Buck did not process § 87(2)(b)'s complaint regarding officers.	
C.DT3 Michelle Wallace	Abuse: On January 6, 2019, at the 114th Precinct stationhouse in Queens, Detective Michelle Wallace threatened to arrest § 87(2)(b)	

Case Summary

On January 7, 2019, § 87(2)(b) contacted the CCRB by phone and filed this complaint.

On January 2, 2019, at approximately 8:30 a.m., § 87(2)(b) got in a dispute over a parking spot with two unidentified females in front of § 87(2)(b) in Queens. The females assaulted § 87(2)(b). § 87(2)(b) displayed a can of pepper spray to defend himself, but denied spraying it at the females.

When the police arrived, § 87(2)(b) told officers that he was assaulted by the females and that he wanted them to be arrested. Sgt. Pearce Martinez, from PSA 9, told § 87(2)(b) that if the females were getting arrested, he would get arrested as well, because he had a can of pepper spray in his hand (**Allegation A: Abuse of Authority- Threat of Arrest**, § 87(2)(g)). § 87(2)(b) told Sgt. Martinez that he did not use the pepper spray and that he only had it for self-defense purposes. Sgt. Martinez replied, “Jump in the car and go, unless you want to go to jail,” (**Subsumed in Allegation A**). § 87(2)(b) complied and left.

On January 2, 2019, before 3:45 p.m., § 87(2)(b) went to the 114th Precinct stationhouse in Queens to file a complaint against Sgt. Martinez. While at the stationhouse, § 87(2)(b) spoke to PO Melissa Buck, of the 114th Precinct, who completed a complaint report regarding § 87(2)(b)'s assault, but never took the complaint against Sgt. Martinez (**Allegation B: Abuse of authority- Refusal to Process Civilian Complaint**, § 87(2)(g)).

On January 6, 2019, at approximately 6:00 p.m., § 87(2)(b) returned to the 114th Precinct stationhouse and met with Det. Michelle Wallace, from the 114th Precinct Detective Squad, who was assigned to investigate his criminal complaint against the females. During the interview, Det. Wallace said to § 87(2)(b) “You can go through the process, but all I am saying is that once I go and pick these individuals up and they tell me that you had a can of pepper spray, and that they wish to pursue charges against you, do not get surprised that I call you and tell you to turn yourself in” (**Allegation C: Abuse of Authority- Threat of Arrest**, § 87(2)(g)).

§ 87(2)(b) was not arrested or summonsed as a result of either incident.

There was no BWC recording for either incident. § 87(2)(b) provided the investigation with a brief video he took during his initial assault, which did not capture his interaction with Sgt. Martinez. This video is located in and can be viewed from Investigative Action #39.

Findings and Recommendations

Allegation (A) Abuse of Authority: On January 2, 2019, in front of § 87(2)(b) in Queens, Sergeant Pearce Martinez threatened to arrest § 87(2)(b)

Allegation (C) Abuse of Authority: On January 6, 2019, at the 114th Precinct stationhouse in Queens, Detective Michelle Wallace threatened to arrest § 87(2)(b)

§ 87(2)(g). However, it is undisputed that they could have arrested § 87(2)(b) for assaulting one of the females, who alleged that § 87(2)(b) ran over her foot with his vehicle.

§ 87(2)(b) (BR 01) stated that on January 2, 2019, at approximately 8:30 a.m., he was looking for parking in front of his building at § 87(2)(b) in Queens. § 87(2)(b) was driving his 2008 silver Honda Sonata sedan. A taxi cab pulled out of a parking spot and § 87(2)(b) merged in and parked. Before he could exit his vehicle, two unidentified females, F1 and F2, threw coffee cups at his vehicle. § 87(2)(b) exited the vehicle to record the females, when F1 pulled out a club from her vehicle and swung at § 87(2)(b). She missed hitting § 87(2)(b) but did hit the driver side door of his vehicle, causing a dent. As F1 hit the vehicle, the bottom part of

the club broke off and fell to the ground. § 87(2)(b) picked it up and intended to use it in self-defense. § 87(2)(b) then pulled out a can of pepper spray – which he described as a small yellow and red can, with a white warning label and a red spray release button – pointed it in the direction of the females, and warned them that he was going to spray them. § 87(2)(b) denied having a mace spray during this incident. F1 and F2 got scared and stepped away. Simultaneously, a crowd of approximately ten unidentified individuals gathered and acted aggressively towards § 87(2)(b). § 87(2)(b) held the pepper spray can and the bottom of the club in his hands, but denied using them against the crowd. § 87(2)(b) moved closer to his building to find shelter.

Shortly afterwards, approximately ten uniformed officers from PSA 9 arrived. He did not know who called the police. As the officers ran toward § 87(2)(b), F1 and F2 kept yelled that he assaulted and pepper-sprayed them. Officers approached § 87(2)(b) and ordered him to drop the club, and he complied. § 87(2)(b) told the officers that he did not assault anyone and that he had a video of the incident, which he then showed to one of the officers, identified by the investigation as PO Alexander Skaats of PSA 9. PO Skaats reviewed the video and asked § 87(2)(b) to wait while he spoke to Sgt. Martinez. While waiting for PO Skaats to return, § 87(2)(b) heard F1 complain to the officers that he ran over her foot with his vehicle and pepper-sprayed her. § 87(2)(b) denied doing any of that.

After several minutes, PO Skaats returned and ordered F1 and F2 to leave. § 87(2)(b) walked over to Sgt. Martinez and said that he wished to press charges against F1 and F2. Sgt. Martinez told § 87(2)(b) that if the females were arrested, he would be arrested as well because he had a can of pepper spray in his hand. § 87(2)(b) showed Sgt. Martinez the pepper spray can and said that it was legal for him to have it as long as he was using it for self-defense. Sgt. Martinez replied to § 87(2)(b) “Jump in the car and go, unless you want to go to jail.” § 87(2)(b) did not wish to argue with Sgt. Martinez, thus left.

On January 2, 2019, before 3:45 p.m., § 87(2)(b) went to the 114th Precinct stationhouse and filed a criminal complaint report against F1 and F2, which he successfully. On January 6, 2019, at approximately 6 p.m., § 87(2)(b) appeared at the 114th Precinct stationhouse to be interviewed by Det. Wallace regarding this complaint. § 87(2)(b) showed Det. Wallace the video he took during the incident and told her what happened. Det. Wallace showed § 87(2)(b) a line-up of potential suspects, which did not contain the photographs of his assailants. Det. Wallace asked § 87(2)(b) if he had a pepper-spray at the time of the incident. § 87(2)(b) acknowledged having it and told Det. Wallace that he intended to use it for self-defense. Det. Wallace responded, “You can go through with the process, but all I am saying is that once I go and pick these individuals up and they tell me that you had a can of pepper spray, and that they wish to pursue charges against you, do not get surprised that I call and tell you to turn yourself in.” § 87(2)(b) told Det. Wallace that it was unfair that after his assailants get arrested, they could press charges against him. Det. Wallace told § 87(2)(b) that it was what it was. § 87(2)(b) then left the stationhouse.

§ 87(2)(b) provided the investigation with a brief video that captured his altercation with the females (BR 02). The video does not capture § 87(2)(b)'s interaction with Sgt. Martinez. At the 00:41 minute mark, the video shows a black female, F1, holding a metal bar in her right hand. At the 00:48 minute mark, § 87(2)(b) yells at F1 and F2, “Get the fuck out from here.” A female voice, F1 or F2, replies, “That’s why you mace.” The video does not capture the females or § 87(2)(b) and the females continue to argue. At the 00:56 minute mark, a female voice, F1 or F2, is heard saying, “What is that? Mace?” At the 1:18 minute mark, F1 walks up to § 87(2)(b) yelling “Go, go, go,” while holding a metal bar in her right hand. At the

3:33 minute mark, § 87(2)(b) yells out, “I have everything recorded on video. Come and look at it. I want her arrested.” At the 3:46 minute mark, § 87(2)(b) says, “No, she had it. She wanted to assault me with it. I just grabbed it, sir.” He then drops something to the ground as several officers approach him.

There is no other known source of video evidence (BR 16).

EVENT #§ 87(2)(b) (BR 03) indicates that a female called 911, stating that a male was trying to hit her friend with his vehicle, a gray Honda Sonata. Several seconds later, another call came over in which another female stated that a male was assaulting two females and that he ran over her friend’s foot.

EVENT #§ 87(2)(b) (BR 04) indicates that a female called 911 stating that a male ran over her foot and maced her at the location. EMS was dispatched to the location.

Sgt. Martinez (BR 05) stated that he received a radio call of an assault in progress at the above location. A female called 911 stating that she was assaulted by a black male, § 87(2)(b) who ran over her foot. When Sgt. Martinez arrived, he saw multiple units at the scene. § 87(2)(b) was separated from F1, F2, and a large group of unidentified individuals. Sgt. Martinez spoke to PO Skaats, who told him that § 87(2)(b) had a video of the incident and that he reviewed the video, but that it only captured a verbal argument between § 87(2)(b) and the females. Based on the information that was provided to him by PO Skaats, Sgt. Martinez believed that the incident was just a dispute.

Sgt. Martinez then spoke to F1 who stated that § 87(2)(b) ran over her foot and then pepper-sprayed her and her friends. Sgt. Martinez did not see any visible signs of F1 or anyone else from the crowd being pepper-sprayed. F1 later refused medical attention and said that she did not wish to press charges against § 87(2)(b).

Afterwards, Sgt. Martinez spoke to § 87(2)(b). § 87(2)(b) expressed desire to press charges against F1 and F2, stating that they spilled coffee on his car’s windshield. Sgt. Martinez told § 87(2)(b) that he could not arrest them for spilling coffee over his vehicle. § 87(2)(b) never complained to Sgt. Martinez that he was assaulted by F1 or F2, or that they damaged his vehicle. Sgt. Martinez then told § 87(2)(b) to leave and asked him to park his vehicle at another location to prevent it from being vandalized by the females or their friends, who remained at the scene and were visibly upset with § 87(2)(b). § 87(2)(b) refused to move his vehicle, stating something to the effect of, “I will fight them if I have to. I will do what I need to do.” Sgt. Martinez replied to § 87(2)(b) “Listen, if you leave your car parked here, you will get in some type of altercation with them. Eventually, there may be a scenario where you all can get arrested. There is no need for that. Just park your car around the block and wait till all these people leave, so that you avoid escalating the situation.” Sgt. Martinez only provided § 87(2)(b) with a hypothetical scenario to gain his compliance. Eventually, § 87(2)(b) got in his vehicle and left the scene.

Sgt. Martinez denied threatening to arrest § 87(2)(b) if the females got arrested, or for having a pepper spray can, or saying to him, “Jump in the car and go, unless you want to go to jail.” Sgt. Martinez denied discussing pepper spray or the use of it with § 87(2)(b) nor did he see § 87(2)(b) holding a can of pepper spray during their interaction. None of the officers at the scene informed Sgt. Martinez that § 87(2)(b) had or used pepper spray. Sgt. Martinez only heard of pepper spray when F1 alleged being pepper-sprayed by § 87(2)(b). Sgt. Martinez did not remember if F1 mentioned that she was “maced.” Sgt. Martinez added that it was legal to use pepper spray for self-defense purposes, but noted that it was illegal to use mace spray.

Det. Wallace (BR 12) § 87(2)(g)

At some point during the interview, Det. Wallace asked § 87(2)(b) if he ran over F1's foot or "maced" her. § 87(2)(b) denied doing both. Det. Wallace did not remember if § 87(2)(b) acknowledged having a can of pepper spray or mace at the time of the incident, but noted that one of the EVENTS mentioned that F1 was "maced." Det. Wallace stated that it was illegal to have a mace spray, but that it was legal to carry certain kinds of pepper spray for self-defense purposes only. Afterwards, Det. Wallace informed § 87(2)(b) that, based on the video and the EVENT of the 911 call, F1 alleged that he "maced" her and ran over her foot with his vehicle. Det. Wallace then said to § 87(2)(b) "If a complaint report is filed by any of these women, there is a possibility of you being arrested in regard to this case." Det. Wallace reassured § 87(2)(b) that she had no problem moving forward with the complaint, and just wished to give him a "heads-up" if any of the females decide to file a cross-complaint against him.

The Complaint Report (UF-61) (BR 10) prepared by PO Melissa Buck documents that § 87(2)(b) got in a verbal dispute with unknown females over the parking spot, and that they hit him in the right shoulder with a spray can or a club and hit his car, causing damage.

Under the NYPD Patrol Guide Procedure 208-01 (BR 06), an officer may arrest a civilian if he has reasonable cause to believe that person has committed an offense. Under the NY CLS Penal § 120.00 (BR 07), a person is guilty of assault in the third degree when: (1) with intent to cause physical injury to another person, he causes such injury to such person or to a third person; (2) or he recklessly causes physical injury to another person; or (3) with criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument. Assault in the third degree is a misdemeanor offense.

§ 87(2)(g)

Allegation (B) Abuse of Authority: On January 2, 2019, at the 114th Precinct stationhouse, Police Officer Melissa Buck did not process § 87(2)(b)'s complaint regarding officers.

It is undisputed that PO Buck did not process § 87(2)(b)'s complaint against Sgt. Martinez.

§ 87(2)(b) (BR 01) stated that on January 2, 2019, before 3:45 p.m., he went to the 114th Precinct stationhouse to file a complaint against Sgt. Martinez. Upon approaching the front desk, § 87(2)(b) spoke to an unidentified cadet. § 87(2)(b) informed the cadet that he wished to file a complaint against two unidentified females who assaulted him and another complaint against Sgt. Martinez. § 87(2)(b) expressly told the cadet that he wanted him to fill out the report against Sgt. Martinez, so that § 87(2)(b) could proof read and sign it. The cadet replied to § 87(2)(b) "We can take the report [against Sgt. Martinez] and type it up if we want to, or we can give you this number, and this is what we choose to do. To give you this number so you could file

the report.” PO Buck then intervened and directed § 87(2)(b) to the CCRB poster that was hanging on the wall to the side of the front desk and asked him to take a photograph of it, which § 87(2)(b) did (BR 08). PO Buck then proceeded to work on the complaint report regarding § 87(2)(b) s assault.

There is no BWC recordings or any other known source of video for this incident.

PO Buck (BR 09) stated that while she was speaking to Sgt. Justin Dengler by his desk, she saw § 87(2)(b) and his girlfriend enter the stationhouse and approached the front desk. § 87(2)(b) appeared upset as he yelled at the cadet. PO Buck did not hear what conversation § 87(2)(b) had with the cadet, but said that it lasted no more than several seconds before she intervened. PO Buck approached the front desk and told the cadet to ask § 87(2)(b) to wait for her to assist him.

Several minutes later, PO Buck called § 87(2)(b) and asked how she could help him. § 87(2)(b) told PO Buck that he wished to file a complaint against an officer. PO Buck told § 87(2)(b) that she could provide him with the information on how to file a complaint against an officer. § 87(2)(b) agreed. PO Buck then asked § 87(2)(b) for his cell phone so she could take a photograph of the CCRB poster. § 87(2)(b) agreed and provided his cell phone to PO Buck. PO Buck then returned to Room #124 and took a photograph of the CCRB poster. PO Buck was shown the photograph of the CCRB poster provided to the investigation by § 87(2)(b). She acknowledged that it was the photograph she took on § 87(2)(b) s cell phone.

Afterwards, she returned to § 87(2)(b) and explained to him on how he could file a complaint with the CCRB. She informed § 87(2)(b) that he could file the complaint online, write a letter, or appear at the agency in person. § 87(2)(b) told PO Buck that he was familiar with the CCRB and knew how to proceed with filing the complaint.

PO Buck never offered § 87(2)(b) the opportunity to file a complaint or to be interviewed at the stationhouse, nor did § 87(2)(b) ask for any of that. PO Buck acknowledged that she was familiar with the Patrol Guide Procedure on processing civilian complaints and said, “We have to make a notification, if we file a complaint. We can file a complaint for them. They [the civilians] can do it online. They can do it in person, or over the phone.” PO Buck denied refusing to process § 87(2)(b) s civilian complaint, said that she provided § 87(2)(b) with sufficient information on how to file the complaint with the CCRB, and that § 87(2)(b) appeared satisfied with her taking the photograph of the CCRB poster on his cell phone. PO Buck never informed Sgt. Dengler of § 87(2)(b) s desire to file a complaint against the officer.

Patrol Guide Procedure 207-31 (BR 11) states that upon receipt from a civilian alleging misconduct by a uniformed member of service, officers must report misconduct to the Civilian Complaint Review Board. If the complaint is made in person, the receiving officer must interview the complainant and provide them with a copy of the complaint report for them to complete.

§ 87(2)(g)

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Civilian and Officer CCRB Histories

- Jovani § 87(2)(b) has been party to one CCRB complaint and has been named a victim in three allegations (BR 13):
 - § 87(2)(b)
- Sgt. Pearce Martinez has been a member-of-service for five years and has been a subject in two CCRB complaints and three allegations, one of which was substantiated:
 - 201506032 involved a substantiated allegation of force (physical force) against Sgt. Martinez. The Board recommended charges, and the NYPD has not yet imposed discipline. The case is currently pending investigation.
- PO Melissa Buck has been a member-of-service for three years and has been a subject in two allegations:
 - 201802766 involves allegations of abuse of authority (entry) § 87(2)(g)
- Det. Michelle Wallace has been a member-of-service for 11 years and this is the first CRB complaint to which she has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of March 28, 2019, no Notice of Claim has been filed regarding this incident (BR 14).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 4

Investigator: _____

Signature _____ Print Title & Name _____ Date _____

Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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